

## 8.406-5

### 8.406-5 Termination for the Government's convenience.

(a) An ordering activity contracting officer may terminate individual orders for the Government's convenience. Terminations for the Government's convenience shall comply with FAR 12.403.

(b) Before terminating orders for the Government's convenience, the ordering activity contracting officer shall endeavor to enter into a "no cost" settlement agreement with the contractor.

(c) Only the schedule contracting officer may modify the schedule contract to terminate any, or all, supplies or services covered by the schedule contract for the Government's convenience.

### 8.406-6 Disputes.

(a) *Disputes pertaining to the performance of orders under a schedule contract.*

(1) Under the Disputes clause of the schedule contract, the ordering activity contracting officer may—

(i) Issue final decisions on disputes arising from performance of the order (but see paragraph (b) of this section); or

(ii) Refer the dispute to the schedule contracting officer.

(2) The ordering activity contracting officer shall notify the schedule contracting officer promptly of any final decision.

(b) *Disputes pertaining to the terms and conditions of schedule contracts.* The ordering activity contracting officer shall refer all disputes that relate to the contract terms and conditions to the schedule contracting officer for resolution under the Disputes clause of the contract and notify the schedule contractor of the referral.

(c) *Appeals.* Contractors may appeal final decisions to either the Board of Contract Appeals servicing the agency that issued the final decision or the U.S. Court of Federal Claims.

(d) *Alternative dispute resolution.* The contracting officer should use the alternative dispute resolution (ADR) procedures, to the maximum extent practicable (see 33.204 and 33.214).

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### 8.406-7 Contractor Performance Evaluation.

Ordering activities must prepare at least annually and at the time the work under the order is completed, an evaluation of contractor performance for each order that exceeds the simplified acquisition threshold in accordance with 42.1502(c).

[78 FR 46787, Aug. 1, 2013]

## Subpart 8.5—Acquisition of Helium

SOURCE: 67 FR 13064, Mar. 20, 2002, unless otherwise noted.

### 8.500 Scope of subpart.

This subpart implements the requirements of the Helium Act (50 U.S.C. 167, *et seq.*) concerning the acquisition of liquid or gaseous helium by Federal agencies or by Government contractors or subcontractors for use in the performance of a Government contract (also see 43 CFR part 3195).

### 8.501 Definitions.

As used in this subpart—

*Bureau of Land Management* means the Department of the Interior, Bureau of Land Management, Amarillo Field Office, Helium Operations, 801 South Fillmore Street, Suite 500, Amarillo, TX 79101-3545.

*Federal helium supplier* means a private helium vendor that has an in-kind crude helium sales contract with the Bureau of Land Management (BLM) and that is on the BLM Amarillo Field Office's Authorized List of Federal Helium Suppliers available via the Internet at <http://blm.gov/8pjd>.

*Major helium requirement* means an estimated refined helium requirement greater than 200,000 standard cubic feet (scf) (measured at 14.7 pounds per square inch absolute pressure and 70 degrees Fahrenheit temperature) of gaseous helium or 7510 liters of liquid helium delivered to a helium use location per year.

[67 FR 13064, Mar. 20, 2002, as amended at 76 FR 68044, Nov. 2, 2011]

### 8.502 Policy.

Agencies and their contractors and subcontractors must purchase major

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helium requirements from Federal helium suppliers, to the extent that supplies are available.

### 8.503 Exception.

The requirements of this subpart do not apply to contracts or subcontracts in which the helium was acquired by the contractor prior to award of the contract or subcontract.

### 8.504 Procedures.

The contracting officer must forward the following information to the Bureau of Land Management within 45 days of the close of each fiscal quarter:

- (a) The name of any company that supplied a major helium requirement.
- (b) The amount of helium purchased.
- (c) The delivery date(s).
- (d) The location where the helium was used.

### 8.505 Contract clause.

Insert the clause at 52.208-8, Required Sources for Helium and Helium Usage Data, in solicitations and contracts if it is anticipated that performance of the contract involves a major helium requirement.

## Subpart 8.6—Acquisition From Federal Prison Industries, Inc.

SOURCE: 69 FR 16149, Mar. 26, 2004, unless otherwise noted.

### 8.601 General.

- (a) Federal Prison Industries, Inc. (FPI), also referred to as UNICOR, is a self-supporting, wholly owned Government corporation of the District of Columbia.
- (b) FPI provides training and employment for prisoners confined in Federal penal and correctional institutions through the sale of its supplies and services to Government agencies (18 U.S.C. 4121-4128).
- (c) FPI diversifies its supplies and services to minimize adverse impact on private industry.
- (d) Supplies manufactured and services performed by FPI are listed in the FPI Schedule, which can be accessed at <http://www.unicor.gov> or by submitting a written request to Federal Prison In-

dustries, Inc., Department of Justice, Washington, DC 20534.

(e) Agencies are encouraged to purchase FPI supplies and services to the maximum extent practicable.

[69 FR 16149, Mar. 26, 2004, as amended at 70 FR 18958, Apr. 11, 2005]

### 8.602 Policy.

(a) In accordance with 10 U.S.C. 2410n and Section 637 of Division H of the Consolidated Appropriations Act, 2005 (Pub. L. 108-447), and except as provided in paragraph (b) of this section, agencies shall—

(1) Before purchasing an item of supply listed in the FPI Schedule, conduct market research to determine whether the FPI item is comparable to supplies available from the private sector that best meet the Government's needs in terms of price, quality, and time of delivery. This is a unilateral determination made at the discretion of the contracting officer. The arbitration provisions of 18 U.S.C. 4124(b) do not apply;

(2) Prepare a written determination that includes supporting rationale explaining the assessment of price, quality, and time of delivery, based on the results of market research comparing the FPI item to supplies available from the private sector;

(3) If the FPI item is comparable, purchase the item from FPI following the ordering procedures at <http://www.unicor.gov>, unless a waiver is obtained in accordance with 8.604; and

(4) If the FPI item is not comparable in one or more of the areas of price, quality, and time of delivery—

(i) Acquire the item using—

(A) Competitive procedures (*e.g.*, the procedures in 6.102, the set-aside procedures in subpart 19.5, or competition conducted in accordance with part 13); or

(B) The fair opportunity procedures in 16.505, if placing an order under a multiple award delivery-order contract;

(ii) Include FPI in the solicitation process and consider a timely offer from FPI for award in accordance with the item description or specifications, and evaluation factors in the solicitation—

(A) If the solicitation is available through the Governmentwide point of